

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 06-03
(July 20, 2006)

Accepting Award from Activist Organization

Issue

May a judge accept an award for “Excellence in Adjudication” from Mothers Against Drunk Driving?

Answer: No.

Facts

A judge has been notified that Mothers Against Drunk Driving (“MADD”) plans to honor him with the “Excellence in Adjudication/Youth Education” Award at its annual “Making a Difference Together” Law Enforcement Appreciation Dinner. The event is co-sponsored by MADD and the Governor’s Office of Highway Safety. The would-be honoree questions the propriety of accepting such an award. Fund-raising is not an issue.

Discussion

MADD is a national organization devoted to decreasing the incidence of drunk driving through public education and political action. It also provides victim support and works to prevent underage drinking. MADD’s logo appears on the organization’s web site and its promotional materials in large, bold letters followed by the words “Activism, Victim Services, Education” in similar but smaller letters, separated by vertical bars. The implication is that these activities are the primary goals or functions of the organization.

The inquiry involves several provisions of the Code of Judicial Conduct. Canon 4A(1) cautions judges to conduct their extra-judicial activities so that they do not, *inter alia*, “cast reasonable doubt on the judge’s capacity to act impartially as a judge.” A similar requirement is found in Canon 2A, which requires that a judge “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” A judge may, however, participate in civic activities that “do not reflect adversely upon the judge’s impartiality or interfere with the performance of the judge’s judicial duties.” Canon 4B(4).

Other portions of the Code encourage judges to remain connected to their communities through civic activities. The commentary to Canon 4A, for example, states: “Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.”

In the same vein, judges are encouraged to contribute to the improvement of the law, the legal system, and the administration of justice due to their unique positions and perspectives. *See* Canon 4B commentary. The challenge is drawing the line between judicial activities devoted to improving the legal system and involvement that might lead a reasonable person to question the judge’s impartiality in certain types of cases.

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The award at issue is entitled “Excellence in Adjudication, Youth Education.” The criteria utilized in selecting the recipients are unknown. The title of the award, standing alone, might not raise any ethical “red flags.” It is important, however, to consider the award in conjunction with the organization that is offering it. As its logo reflects, MADD is, at least in part, an organization devoted to activism. It has a defined political and ideological agenda. Among its myriad of activities, MADD maintains a “Court Monitoring Program,” which is described on its website as follows:

As one of MADD’s core programs, the Court Monitoring Program is a *tool to observe the DWI/DUI criminal justice system and create accountability*. The program is focused on forming strong strategic alliances with law enforcement, judges, prosecutors, and the defense bar, including public defenders (emphasis added).

The “accountability” that MADD intends to create via its Court Monitoring Program presumably attaches not only to criminal defendants, but to the judicial system itself. In other words, how judges and court systems deal with drunk drivers is a subject of vital interest to MADD. And while it is difficult to disagree with MADD’s goal of decreasing drunk driving, the fact that its mission is often adversarial to those charged with DUI offenses cannot be ignored.

Other jurisdictions have considered similar issues. The State of Washington, for example, has determined that a judge may not ethically give a speech regarding the “Role of MADD and the Court System,” finding that such a presentation would “cast doubt on the judicial officer’s capacity to decide impartially DUI issues which may come before the judicial officer.” Wash. Op. 96-09.

Accepting an award from MADD based on “excellence in adjudication” of DUI cases also triggers disqualification considerations. Canon 3E(1) mandates disqualification “in a proceeding in which the judge’s impartiality might reasonably be questioned” The issue is not whether the judge is *in fact* biased. The relevant inquiry is whether an objective observer might reasonably question the judge’s impartiality under the circumstances, as the commentary to Canon 3E(1) explains.

The public’s perception of judicial impartiality is of utmost concern. If the award in question were merely for “Youth Education” (the second half of the award title), a different conclusion might result. A reasonable person might well feel differently about a judge who has worked with youth in an effort to deter drunk driving versus a judge who has been honored based on MADD’s perception that he demonstrates excellence in adjudicating the DUI cases coming before him.

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Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 2A, 3E, 4A and 4B and related commentary (1993).

Other References

Washington Ethics Advisory Committee, Opinion 96-09 (May 10, 1996).

Web site for Mothers Against Drunk Driving: www.madd.org